

## SCHEDULE 3

Regulation 6(c)

### Testing

#### **Test purchases**

1. A market surveillance authority may, for the purpose of testing any product to ascertain whether any provision of these Regulations or RAMS has been breached, purchase, or authorise an officer of the market surveillance authority to purchase, any product.

2.—(1) If a product so tested fails to comply with an EU measure, the market surveillance authority may recover its testing costs from the person who placed it on the market for the first time.

(2) Costs include in particular—

- (a) all the costs of purchasing and disposing of the product;
- (b) all the administration and labour costs including third party testing costs throughout the testing period.

(3) The market surveillance authority is not entitled to recover any costs proven to have been incurred unnecessarily.

#### **Notice of intent**

3.—(1) If the market surveillance authority proposes to recover its testing costs it must serve a notice of what is proposed (a “notice of intent”) within 20 days of obtaining proof that the product has failed to comply with an EU measure.

(2) The notice of intent must include—

- (a) a statement that the product has been tested and has failed to comply with an EU measure;
- (b) details of the tests carried out;
- (c) the amount to be paid;
- (d) a detailed breakdown of the testing costs incurred; and
- (e) information as to—
  - (i) the right to make representations and objections within 28 days beginning on the day on which the notice of intent was received;
  - (ii) the circumstances in which the market surveillance authority may not recover its costs.

#### **Making representations and objections**

4. A person upon whom a notice of intent has been served may, within 28 days beginning on the day on which the notice was received, make written representations and objections to the market surveillance authority in relation to the proposed recovery of costs.

#### **Final notice**

5.—(1) Within 20 days following the end of the period for making representations and objections the market surveillance authority must decide whether to impose the requirements of the notice of intent with or without modifications.

(2) Where the market surveillance authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 6.

### **Contents of final notice**

6. A final notice must include—
- (a) a statement that the product has been tested and has failed to comply with an EU measure;
  - (b) details of the tests carried out;
  - (c) the amount to be paid and the period within which the payment must be made which must not be less than 28 days;
  - (d) a detailed breakdown of the testing costs incurred;
  - (e) information as to—
    - (i) how payment must be made;
    - (ii) the consequences of failing to comply with the notice within the specified period;
    - (iii) rights of appeal.

### **Appeal**

- 7.—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.
- (2) The Tribunal must determine the standard of proof.
- (3) A notice under this Schedule is suspended pending appeal.
- (4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
- (a) withdraw the notice;
  - (b) confirm the notice;
  - (c) vary the notice; or
  - (d) remit the decision whether to confirm the notice, or any matter relating to that decision, to the market surveillance authority.

### **Mode of recovery**

8. The market surveillance authority may recover the amount due under a final notice as if payable under a court order.

### **Guidance**

- 9.—(1) The Secretary of State must publish guidance about the recovery of costs.
- (2) The guidance must contain relevant information and the Secretary of State must update and revise the guidance where appropriate.
- (3) The market surveillance authority must have regard to the guidance in exercising its functions.
- (4) In this paragraph, relevant information is information about—
- (a) the circumstances in which a final notice under this Schedule is likely to be imposed and when it is not likely to be imposed;
  - (b) how the costs of the test will be calculated;
  - (c) the matters likely to be taken into account by the market surveillance authority in determining the amount to be recovered; and
  - (d) the rights to make representations and objections and the rights of appeal.